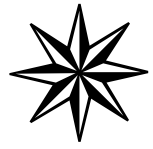


**SOELR 1999**



**PREPARING  
YOUR CASE  
FOR  
ARBITRATION**



**PRESENTED BY:**

Each Depositor Insured to \$100,000



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## ***I. INTRODUCTION***

### ***Types of Cases: Difference and Similarities***

- ❖ ***Disciplinary Arbitrations***
- ❖ ***Contract Arbitrations***

### ***Burden of Proof: Tactical and Strategic Significance***

- ❖ ***Types of Burdens: Preponderance and Substantial***
- ❖ ***Discipline: Burden on the Employer***
- ❖ ***Contract: Burden on the Union***
- ❖ ***Mixed cases: Shifting Burden***

### ***Discipline Cases: Evidentiary Considerations***

- ❖ ***The Oral/Written Reply Record***
- ❖ ***The Evidence File***
- ❖ ***Union's ability to expand the record***
- ❖ ***Employer's inability to expand the record***

### ***Contract Cases: Evidentiary Considerations***

- ❖ ***Bargaining History***
- ❖ ***Documents; "Table Papers"; Proposals exchanges***
- ❖ ***Witnesses for bargaining history and foundation for documents***
- ❖ ***Case law and precedent***

## ***II. ARBITRATOR SELECTION: THEORY AND PRACTICE***

### ***Common and Popular Selection Processes***

- ❖ ***Federal Mediation and Conciliation Service***
- ❖ ***Panels developed by parties***
- ❖ ***American Arbitration Association and Others***

### ***How an Arbitrator becomes an Arbitrator and its significance to selection***

- ❖ ***Education: Lawyers and Non-Lawyers***
- ❖ ***Experience: Management, Labor and Neutral***

### ***Practical Lessons Learned***

- ❖ ***Alternate-Strike Process***
- ❖ ***Arbitrator Experience: Federal/Non-Federal background***
- ❖ ***Academics as Arbitrators***
- ❖ ***Retired ALJ's as Arbitrators***
- ❖ ***The Arbitrator's Award History***

### **III. DEVELOPING THE THEORY OF THE CASE**

#### **❖ Know the Facts**

***“...time, place, circumstance...”***

***Metropolitan Police Academy Training Manual***

***“...people, the things that they do, the times that they do them...”***

***Detective Andrew Sipowicz, NYPD Blue***

#### **❖ Know the Law/Rule/Regulation/Contract**

#### **❖ Application of the Law/Rule/Regulation/Contract to the Facts**

***Collegial Approaches: Team Work and Moot Presentations***

***“...the more fingerprints on the knife the better...”***

***Case Structure***

***“...a beginning a middle and an end, pretty much in that order...”***

***The relationship between the Theory and Settlement***

***“...there is no substitute for knowing your case...”***

#### **❖ Witness selection: Plan, preparation and order**

***“...the hearing is the chance for you to tell your story...”***

#### **❖ The Inner Game of Arbitration: Practical Lessons Learned**

***How do I get the most out of myself?***

***“...you are the sum total of all that has gone before...”***

***In no particular order, a litany of things learned about the inner game of arbitration and how to win from the inside out.***

## **IV. SETTLEMENT: THEORY AND PRACTICE**

### **❖ *Timing Settlement discussion and Settlements***

***“...are we there yet?”  
child in back seat***

### **❖ *Goal Oriented Settlement: Getting your clients on board the “settlement train”***

***The Story of the Trip to Grand Ma’s house.***

***Where are we now?***

***Where do we want to be?***

***What is the difference?***

***How do we get there?***

### **❖ *The Art of Recognizing a “Good Deal” when it comes***

***Lessons we can learn from really good salesmen.***

***The art of the deal is rooted in the science of the substance.***

### **❖ *Written Settlements and Samples***

***“...there is a reason we write things down, so we don’t have to remember them...”***

***George Carlin***

***“...we don’t have to trust each other, we’re going to write it down...”***

***George Dreisen, Esq.***

***Template for Settlement***

***“...never settle into litigation...”***

***Sean J. Rogers, Esq.***

## **V. SUMMARY AND CONCLUSIONS**

- ❖ **INTRODUCTION**
- ❖ **ARBITRATOR SELECTION: THEORY AND PRACTICE**
- ❖ **DEVELOPING THE THEORY OF THE CASE**
- ❖ **SETTLEMENT: THEORY AND PRACTICE**

## **VI. QUESTION & ANSWER PERIOD**

### **NOTES**

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## ***NOTES***

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# **SETTLEMENT AGREEMENT**

**BETWEEN**

**(EMPLOYER'S NAME)**

**AND**

**(UNION'S NAME)**

## **INTRODUCTION**

*This is a settlement agreement between (EMPLOYER'S NAME) and (UNION'S NAME) concerning the grievance of (GRIEVANT'S).*

## **BACKGROUND**

*The grievance in this case was filed on (DATE). The Grievant claimed:*

*(AN OBJECTIVE STATEMENT OF THE GRIEVANT'S CLAIM, PERHAPS TAKEN VERBATIM FROM THE ORIGINAL GRIEVANCE).*

*The Employer disputed these claims. The Employer asserted:*

*(AN OBJECTIVE STATEMENT OF THE EMPLOYER'S CLAIM, PERHAPS TAKE FROM THE REPLIES TO THE GRIEVANCE AT EACH STEP).*

## **SETTLEMENT**

*The Parties now find that settle of this grievance is in their mutual best interests as follows:*

- 1. (A BRIEF STATEMENT OF WHAT THE EMPLOYER WILL DO TO SETTLE THE CASE; THE "RELIEF" THE PARTIES HAVE AGREED WILL SATISFY THE GRIEVANT AND THE UNION).*
- 2. (A BRIEF STATEMENT OF WHAT THE GRIEVANT WILL DO IN RETURN FOR THE EMPLOYER'S RELIEF. FOR EXAMPLE: IN LAST CHANCE AGREEMENTS, IF THE GRIEVANT MUST SEEK TREATMENT FOR THE PERSONAL PROBLEM WHICH BROUGHT ON THE DISPUTE, THEN*

*DESCRIBE THE TREATMENT).*

3. (A BRIEF STATEMENT OF WHAT THE UNION WILL DO TO SETTLE THE CASE. REMEMBER, IN SOME INSTANCES THE UNION WILL BE GIVING RELIEF TO THE EMPLOYER).

4. The Union and the Grievant agree to withdraw the grievance and arbitration in this case with prejudice. (CAN YOU SETTLE OTHER CASES HERE? SEE: INTEGRATION CLAUSE BELOW).

5. This Settlement Agreement is non-precedential. (OPTIONAL).

This Settlement Agreement is confidential. (OPTIONAL).

This Settlement Agreement may not be used by either party to advance a claim in any forum. (OPTIONAL).

This Settlement Agreement may not be used by either party or copied without the express written permission of all parties. (OPTIONAL).

6. This is the full and complete agreement between the parties concerning this grievance and arbitration. (NARROW INTEGRATION CLAUSE).

This is the full and complete agreement between the parties concerning any and all claims by the Union and the Grievant as to any and all issues raised by the Union and the Grievant in any forum. (BROAD INTEGRATION CLAUSE).

**For the Employer:**

\_\_\_\_\_  
NAME

\_\_\_\_\_  
TITLE

DATE:\_\_\_\_\_

**For the Union:**

\_\_\_\_\_  
NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
GRIEVANT

DATE:\_\_\_\_\_

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